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The War on Marijuana: The Transformation of the War on Drugs in the 1990s

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Abstract and Background

Abstract

Background: As the "war on drugs" enters the latter half of its third decade since being forged into the American lexicon by President Ronald Reagan, the public has grown more skeptical of the current strategy and has proven to be receptive to a broader consideration of alternatives to incarceration. This has been the case most notably with marijuana offenses, where the policy discussion has shifted in some localities to one of decriminalization or de-prioritizing law enforcement resources dedicated to pursuing possession offenses. Despite the increased profile surrounding marijuana policy in recent years, there remains a significant degree of misunderstanding regarding the current strategy, both in terms of how resources are being allocated and to what eventual gain.

Methods: Previous studies have analyzed drug offenses as a general category, but there has yet to be a single study that has focused specifically on marijuana offenders at all stages of the system. This report analyzes multiple sources of data for the period 1990-2002 from each of the critical points in the criminal justice system, from arrest through court processing and into the correctional system, to create an overall portrait of this country's strategy in dealing with marijuana use.

Results: The study found that since 1990, the primary focus of the war on drugs has shifted to low-level marijuana offenses. During the study period, 82% of the increase in drug arrests nationally (450,000) was for marijuana offenses, and virtually all of that increase was in possession offenses. Of the nearly 700,000 arrests in 2002, 88% were for possession. Only 1 in 18 of these arrests results in a felony conviction, with the rest either being dismissed or adjudicated as a misdemeanor, meaning that a substantial amount of resources, roughly \$4 billion per year for marijuana alone, is being dedicated to minor offenses.

Conclusion: The results of this study suggest that law enforcement resources are not being effectively allocated to offenses which are most costly to society. The financial and personnel investment in marijuana offenses, at all points in the criminal justice system, diverts funds away from other crime types, thereby representing a questionable policy choice.

Background

Despite decades of discussion and intense media coverage, there remains considerable confusion regarding how the criminal justice system treats marijuana offenders. This misunderstanding has

catalyzed a contentious debate that has been characterized by disagreements about the appropriate legal status of marijuana, the suitable level of punishment, and the most effective distribution of institutional resources to address marijuana use. This has been coupled with a fundamental difference of opinion about the true dangers that marijuana use poses to American society. In light of international developments in which a number of countries have reduced punishment for marijuana use, as well as the growth in the domestic decriminalization movement culminating in local ballot initiatives and proposals to amend state law, the struggle over the appropriate criminal justice response to marijuana has become a key policy concern.

Drug war advocates such as John Walters and former Attorney General John Ashcroft have frequently remarked that the current criminal justice approach to drug abuse represents an efficient use of resources. Walters, the head of the Office of National Drug Control Policy, has lamented that persons who claim that prisons are full of low-level drug offenders are incorrect and have misinformed the debate on drug policy.^[2]

In order to provide a framework for assessing the role of marijuana enforcement in the criminal justice system, we have conducted a national analysis of marijuana offenders for the period of 1990 to 2002. This includes an assessment of trends in arrest, sentencing, and incarceration, along with an evaluation of the impact of these developments on marijuana price and availability, and the use of crime control resources. Our analysis indicates that the "war on drugs" in the 1990s was, essentially, a "war on marijuana."

Key findings include:

- Of the 450,000 increase in drug arrests during the period 1990-2002, 82% of the growth was for marijuana, and 79% was for marijuana possession alone;
- Marijuana arrests now constitute nearly half (45%) of the 1.5 million drug arrests annually;
- Few marijuana arrests are for serious offending: of the 734,000 marijuana arrests in 2000, only 41,000 (6%) resulted in a felony conviction;
- Marijuana arrests increased by 113% between 1990 and 2002, while overall arrests decreased by 3%;
- New York City experienced an 882% growth in marijuana arrests, including an increase of 2,461% for possession offenses;
- African Americans are disproportionately affected by marijuana arrests, representing 14% of marijuana users in the general population, but 30% of arrests;
- One-third of persons convicted for a marijuana felony in state court are sentenced to prison;
- One in four persons in prison for a marijuana offense - an estimated 6,600 persons - can be classified as a low-level offender;
- An estimated \$4 billion is spent annually on the arrest, prosecution and incarceration of marijuana offenders.

The findings in this report call for a national discussion regarding the zealous prosecution of marijuana use and its consequences for allocation of criminal justice resources and public safety. Law enforcement has focused disproportionately on low-level possession charges as a result of the nation's lack of a thoughtful strategy about how best to address the consequences of marijuana use. Consequently, police

spend a significant amount of time arresting marijuana users, many of whom do not merit being charged in court. This diverts efforts away from more significant criminal activity while having no appreciable impact on marijuana cost, availability, or use. As state and federal resources become more limited, a rational consideration of the most efficient way to address marijuana use is critical; this discussion should take place outside the realm of political rhetoric. The findings in this study can inform that conversation with sound, empirical analysis of more than a decade's worth of data on the criminal justice system's treatment of marijuana offenders.

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Law Enforcement Resource Allocation

In addition to cost, a significant consequence of these tactics includes reduced law enforcement attention to other criminal behavior. Law enforcement resources come from a finite pool of funding in the general revenue fund. It is the responsibility of the legislature to determine how these resources will be allocated (law enforcement, corrections, education, roads, etc.). If the role of law enforcement is to be expanded, there are three options available to accomplish this: 1) increase the size of the common pool (raise taxes); 2) alter the distribution within the common pool (draw monies away from a different program and direct additional funding towards law enforcement); or 3) alter the approach of law enforcement patterns (practice selective enforcement of offenses).

Economists Rasmussen and Benson believe that the latter is the most likely solution. " [I]ndividual police officers and police departments as a whole must decide which laws to attempt to enforce and how rigorously".^[19] Increased resources directed towards a specific type of offense, such as drugs, lead inevitably to a decrease in resources dedicated to another offense. Law enforcement resource allocation is a zero-sum game, and any difference in appropriation is likely to manifest itself in delayed response times. "As drug crimes receive more attention from police... the queues for other offenses must move slower as fewer resources are allocated to them".^[20] This is of particular concern in light of recent developments which indicate that many cities and municipalities are losing police officers in response to budgetary constraints.^[21]

Benson, Rasmussen and Kim find support for this hypothesis. Looking at data from Florida, they conclude that every additional drug arrest leads to an increase of 0.7 Index (serious) crimes.^[22] The authors surmise that increased law enforcement of drug offenses has a dual effect: it directs resources away from the pursuit of Index crimes, and it may drive potential economically motivated drug offenders into non-drug crimes (some of which may be more dangerous or costly to society) where law enforcement attention is not as greatly concentrated. A quasi-replication of that study using more recent data from Florida found that a one percent increase in drug arrests would lead to a .18% increase in Index crime.^[23] The impact of the war on drugs on the enforcement of other crimes has been demonstrated elsewhere. A study of New York State law enforcement data found that an increase in drug arrests for sale and possession led to a significant increase in assaults, robberies, burglaries, and larcenies.^[24] Moreover, a 10% increase in marijuana sale arrests led to 880 additional larcenies statewide.^[25]

The shift in the 1990s towards more aggressive policing of marijuana may have siphoned law enforcement resources away from certain Index crimes. Rasmussen and Benson suggest that not only is this a possible scenario, but that there are institutional incentives in place that encourage the pursuit of drug crimes. Civil asset forfeiture, which permits law enforcement agencies to seize all or a portion of property obtained during a drug investigation, creates an incentive for administrators to dedicate more resources to drug enforcement. " [L]aw enforcement agencies focus resources on enforcement of drug laws because of the financial gains for the agencies arising from forfeitures".^[26] Indeed, a recent analysis of arrest patterns in police departments that are permitted to retain a portion of seized assets discovered that this policy resulted in an increase of drug arrests by 18%, and drug arrests as a portion of all arrests by 20%.^[27]

19 Rasmussen DW, Benson BL: The Economic Anatomy of a Drug War: Criminal Justice in the Commons Edited by: Lanham, MD. Rowman and Littlefield; 1994.

20 Ibid.: 36-7.

21 Hall M: Police, Fire Departments See Shortages Across USA. USA Today. November 29, 2004.

22 Benson BL, Rasmussen DW, Kim I: Deterrence and Public Policy: Trade-Offs in the Allocation of Police Resources. International Review of Law and Economics 1998, 18:77-100.

23 Benson BL, Leburn IS, Rasmussen DW: The Impact of Drug Enforcement on Crime: An Investigation of the Opportunity Cost of Police Resources. Journal of Drug Issues 2001, 31:989-1006.

24 Shepard EM, Blackley R: Drug Enforcement and Crime: Recent Evidence from New York State. Social Science Quarterly, forthcoming. The authors note that an increase in drug possession arrests does not have a significant impact on assaults 2005, 86:.

25 Ibid.

26 Rasmussen, Benson: 135.

27 Mast BD, Benson BL, Rasmussen DW: Entrepreneurial Police and Drug Enforcement Policy. Public Choice 2000, 104:285-308.